for larceny the defendant contended that the city which supplied the water had merely the privilege of taking the water from its natural courses and charging for its distribution and that the water had not assumed such character as personal property as to become the subject of larceny; and also that possession and ownership of the water had been surrendered to the defendant when the water came on his land and before it reached the point of diversion. *Held,* that the defendant was guilty of larceny of the property of the city. *Clark v. State* (1917, Okla.) 167 Pac. 1156.

On the question when possession passes to a customer supplied with an article by means of pipes the decision is supported by cases involving larceny of gas. See *Woods v. People* (1906) 222 Ill. 293, 78 N. E. 607, 5 L. R. A. (N. S.) 560, 6 A. & E. Ann. Cas. 736, and cases there collected. But with respect to ownership by the company or municipality furnishing the supply, the case of water presents theoretical questions which do not arise in the case of a manufactured or mineral product like gas. Water flowing in its natural course is not itself the subject of property, either as realty or as personalty, the rights and privileges of the public or of the owner of the soil underneath or of riparian owners being merely rights and privileges of appropriation and user. *Race v. Ward* (1855, Q. B.) 4 E. & B. 702; *Brown v. Cunningham* (1891) 82 Ia. 512, 48 N. W. 1042. But when lawfully appropriated and reduced to possession in a cistern or other artificial container by any person for his own private use there seems no doubt that it becomes personal property. See *Race v. Ward, supra.* Just what constitutes sufficient appropriation and possession is a question not fully answered by the few authorities found. It is clear that ice cut and stored is properly held a subject of larceny. *Ward v. People* (1843, N. Y. Ct. Err.) 6 Hill 144. And it has been held that one who lawfully enters on the surface of the ice in a public river, stakes off a portion, prepares it for cutting, and continually guards and protects it, has sufficient possession to maintain an action for conversion. *Hickey v. Hazard* (1877) 3 Mo. App. 480; see also *Brown v. Cunningham, supra.* In an English case, which seems to be the decision nearest to the principal case, one drawing water without right from a pipe was held guilty of larceny, but the case is distinguishable in that there the water was, when stolen, in the pipes of and under the control of a purchaser from the water company. *Ferens v. O'Brien* (1883) 11 Q. B. D. 21. Purely as a matter of legal theory it would seem that the question whether a municipality, in a case like the principal case, acquires a property right in the water in its distribution system, or merely the right to divert and conduct the water to the consumer, might be answered either way. The actual decision was no doubt influenced by the court's lack of sympathy with what seemed a highly technical defense, and the absence of any criminal statute to reach the case, if the elements of larceny were found wanting. The result will commend itself to the practical man and it avoids the necessity of special legislation such as has been found necessary in some states to reach the case of "stealing" electricity. See 6 A. & E. Ann. Cas. 739, note.

CRIMINAL LAW—SPECIFIC INTENT—ASSAULT UPON MISTAKEN PERSON.—A statute declared it an offense to make "an assault with a deadly weapon with intent to inflict upon the person of another a bodily injury," without provocation or "where the circumstances of the assault show an abandoned or malignant heart." The information charged the defendant with an assault with a revolver upon S with intent to injure K. *Held,* that the indictment was insufficient since it failed to allege that there was intent to injure the person assaulted. *People v. Stoyan* (1917) 280 Ill. 330, 117 N. E. 464.

In homicide, under the doctrine of "implied" or "constructive" malice, so-called, "constructive intent" or "transposed intent" is held to be sufficient. *State v. Smith* (1847, S. C.) 2 Strob. 77; see Clark, *Crim. Law* 53. Thus if A intends to kill X but the bullet strikes and kills Y, it is said that there is "constructive intent" to kill Y. *State v. Pollard* (1897) 139 Mo. 220, 40 S. W. 949; see 63 L. R. A. 660. This is but a fictitious way of stating the rule that A may be guilty of the murder of Y, although he have no intent to kill or even to injure Y. See 33 L. R. A. (N. S.) 1070. But when a statutory or a common law crime has as one of its essential elements an actual or specific intent to injure the person attacked, it is obvious that the doctrine of "constructive" or "transposed" intent is not applicable. See *Carter v. State* (1890) 28 Tex. App. 355, 13 S. W. 147. If A assaults B in the belief that he is C, it may well be questioned whether it is strictly true that A "intended" to attack B. He certainly intended to attack C. Has he, then, more than one intent? See the discussion in Professor Cook's article, *Act, Intention and Motive* (1917) 26 YALE LAW JOURNAL 645. In the principal case the court construes the Illinois statute as requiring a specific intent to injure the person assaulted. If this is the true construction, the conclusion of the court necessarily follows. But it may well be doubted whether if the indictment had alleged an "intent" to injure the person assaulted, the court would not have held the charge proved by evidence that the attack had been made under a misapprehension as to the identity of the person assaulted. See *McGeehee v. State* (1885) 62 Miss. 772; *Walker v. State* (1856) 8 Ind. 290. See also 7 L. R. A. (N. S.) 630 and 37 *ibid.* 172.

EVIDENCE—INTERPRETATION—DEVISE BY MISTAKEN DESCRIPTION.—The testator's will contained a provision devising to his daughter M "the north 25 acres of the northeast quarter of section 17." He did not own any part of the northeast quarter but he did own the northwest quarter of the section. The devise in question followed a clause giving another daughter the south 15 acres of the northeast quarter of the northwest quarter of section 17. There was no residuary clause. *Held,* that the will was correctly interpreted to vest in M the north 25 acres of the northwest quarter. *Alford v. Bennett* (1917, Ill.) 117 N. E. 89.

The operative, or "ultimate," facts which, as a matter of substantive law, determine the legal effect of a devise fall into two groups, namely, (1) the testator's intentions; and (2) an approximate, though not necessarily a perfect, expression thereof in a properly attested writing. Hence the process of interpretation has two objects of inquiry: (1) What were the testator's actual intentions as shown by such evidence, intrinsic and extrinsic, as may be admissible; and (2) have those intentions been sufficiently expressed in the will? *Cf.* Hawkins, 2 Jurid. Soc. Papers 298. No cases involving interpretation have caused the courts more difficulty than those in which the devise has accurately described land that the testator does not own, but would describe, with the change of a word or figure, land that he does own. In such cases the difficulty is not to ascertain the testator's actual intentions—he clearly intends to devise his own property—but to determine whether the expression of those intentions is a close enough approximation to be given legal effect. If, disregarding the erroneous words or figures, the remaining words of the will approximately, although not perfectly, express the intention to convey the property he owned, the devise should be given effect. *Patch v. White* (1886) 117 U. S. 210, 6 Sup. Ct. 617; *Govin v. Metz* (1894, N. Y. Sup. Ct.) 79 Hun. 461, 29 N. Y. Supp. 988. Illinois, however, adopted the contrary view in *Kurtz v. Hibner* (1870) 55 Ill. 514. This case has been severely criticised [e. g., see Judge Redfield's note in (1871) 10 AM. L. REG. (N. S.) 97 and Judge Caton's reply, *ibid.* 353]; but it has continued to be followed in numerous decisions. See *Lomax v. Lomax* (1905) 218 Ill. 629,